**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

**(Special Original Jurisdiction)**

**MONDAY, THE SEVENTH DAY OF FEBRUARY**
**TWO THOUSAND AND FIVE**

**PRESENT**

**HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE**

**and**
**HON'BLE SRI JUSTICE M.NARAYANA REDDY**

**WRIT PETITION NO : 24625 of 2002**

Between:

1 Bogineni Chandraya Choudhiri S/o Late Venkata Narasaiah
R/o. D.No. 58-13-163, Ganeshnagar, N.A.D. Kotha Road Junction,
Visakhapatnam - 9.
2 Koyilada Krishna S/o Pydiraju
R/o. D.No. 58-13-158, Ganeshnagar, N.A.D. Kotha Road Junction,
Visakhapatnam - 9.
3 Bisetti Videsi Rao S/o Appalanaiudu
R/o. D.No. 58-13-159, Ganeshnagar, N.A.D. Kotha Road Junction,
Visakhapatnam - 9.
4 Konathala Maji Gouri Shankar Rao S/o. Surya Rao
R/o. D.No. 58-13-155, Ganeshnagar, N.A.D. Kotha Road Junction,
Visakhapatnam - 9.

**..... PETITIONER(S)**

AND

1 The Muncipal Corporation, Rept. by its Commissioner.
Visakhapatnam,

2. The National Highways Authority of India, Rept. by it's the Chief Executive

Engineer, Visakhapatnam.

3. The Commissioner of Police,

Visakapatnam

4. The Superintendent of Police,

Visakapatnam

(Respondents 3 and 4 are suo motu impleaded as party respondents

by this order.)

**.....RESPONDENT(S)**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the inaction on the part of the respondents in not removing the illegal encroachments of the roads and road margins at N.A.D., Kotha Road Junction on N.H.5. and Municipal Corporation Roads in that junction and to create a hygienic atmosphere in the locality by making it as a green belt by planting trees to avoid encroachments in future in spite of repeated requests of the local people including the written representations of Ex-Corporator dated: 29-04-2002 as illegal, arbitrary, capricious and violative of Article 21 of the Constitution of India and consequently to direct the respondents to remove the encroachments by way of buddies etc., and make the locality as green belt within the stipulated time by this Honorable Court or to pass any other order or orders in the interest of justice.

Counsel for the Petitioner:SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for Respondent No.1 : Sri T.S.VENKATARAMANA

Counsel for Respondent No.2 : Sri S.S.VARMA (ADDL. CGSC)

Counsel for the Respondents 3 and 4 :Govt. Pleader for Home

The Court made the following :

ORAL ORDER: (Per Hon'ble the Chief Justice)

Petition filed as public interest litigation with prayer to direct the respondents to remove the illegal encroachments on the roads and road margins at N.A.D. Kotha road Junction on National Highway No.5, Visakhapatnam, and Municipal Corporation roads in that junction and to create a hygienic atmosphere in the locality by making it as green belt by planting trees to prevent further encroachments, if any.

It is alleged that despite repeated requests of the local people including written representations of
Ex-Corporator, respondents have not taken any steps, and that therefore necessity arose in filing the writ petition.

Lt. Col. George Mathew, who is working as Project Director, National Highways Authority of India, Project Implementation Unit, Visakhapatnam, has filed an affidavit stating that though it was brought to the notice of the National Highways Authority of India, about the necessity to remove encroachments and converting the area into green belt, but the stretch of NH-5 was previously under the control of Roads and Buildings, National Highways Department, Government of Andhra Pradesh upto
31-01-2001 and it was transferred to National Highways Authority of India, which is a Central Government organisation, on
01-01-2001 and encroachments have been in existence prior to that date. As of today, there are no powers vested with the National Highways Authority of India for removing the encroachments. Within the corporation limits, the Municipal Corporation is vested with the powers to remove encroachments and Revenue authorities have power to do so in other areas. The Ministry of Road, Transport and Highways is likely to enact Central legislation conferring the powers on National Highways Authority of India for removal of encroachments. Thus, all the road margins are maintained by the Municipal Corporation of Visakhapatnam and as such, it is vacant area.

Sri Naveen Mittal, Commissioner of Municipal Corporation of Visakhapatnam, tried to shirk the responsibility by saying that Corporation had not accorded any permission to any of the buddies situated at N.A.D. Kotha Road junction and the portion of road belongs to National Highways Authority of India. Since nobody raised objection, buddies came up and several movable carts cropped up in the

junction, which are almost removed everyday. But, despite efforts, again people come up with movable carts and it is not possible to control them by the officials of first respondent without the assistance of the Police Department. However, it is stated that the first respondent Corporation shall take steps to remove encroachments, if any, in NAD Kotha Road Junction by following the provisions of Municipal Corporation Act since respondent No.1 alone is entitled to remove such encroachments.

In view of what has been stated by respondents in affidavit in reply, we will direct the Commissioner of Police, Visakhapatnam, and the Superintendent of Police, Visakhapatnam, be added as party respondents, and names of counsel appearing for them will also be shown in cause title, and proceed to dispose of the writ petition directing that respondent No.1 may treat the counter-affidavit of respondent No.2 as a request for removal of encroachments, and thereafter respondent No.1 will take all necessary and possible steps in ensuring that all the encroachments at the place in question are removed strictly in accordance with law. In case there is any resistance in removing the encroachments, we direct that, on the request made in that behalf by respondent No.1 or by respondent No.2, respondent Nos.3 and 4 will ensure that proper police protection is provided at the time of removal of encroachments. Respondents 1 and 2 will ensure that the area in question is kept free from encroachments and to ultimately see that it is converted into green belt. Respondent No.1 will initiate appropriate action in the matter within two months from the date of receipt of writ order from the Court.

Writ Petition is accordingly disposed of.

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DEVINDER GUPTA, C.J.

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M.NARAYANA REDDY, J.

07-02-2005

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SECTION OFFICER

To

1 The Commissioner, the Muncipal Corporation, Visakhapatnam,
2 The Chief Executive Engineer, The National Highways Authority of India, Visakhapatnam.

3. The Commissioner of Police,

Visakapatnam

4. The Superintendent of Police,

Visakapatnam

5 1 CC to SMT.ANJANA DEVI, SATYANARAYANA

6 ) 1 CC to MR.VENKATARAMANA

7) 2 CD copies

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